

**Center for Rehabilitation & Healthcare at Dutchess,  
LLC v Savage**

2013 NY Slip Op 34174(U)

September 23, 2013

Supreme Court, Dutchess County

Docket Number: 2347/10

Judge: James V. Brands

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This opinion is uncorrected and not selected for official publication.

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SUPREME COURT - STATE OF NEW YORK  
DUTCHESS COUNTY

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Present:

Hon. JAMES V. BRANDS

Justice. 2013 SEP 25 P 12:48

SUPREME COURT: DUTCHESS COUNTY

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THE CENTER FOR REHABILITATION AND  
HEALTHCARE AT DUTCHESS, LLC,

Plaintiff,

-against-

DECISION AND ORDER  
ON TWO MOTIONS  
Index No: 2347/10

HEATHER SAVAGE, AS ADMINISTRATOR OF THE  
ESTATE OF RONALD BECRAFT,

Defendant.

\_\_\_\_\_x

HEATHER SAVAGE, AS ADMINISTRATOR OF THE  
ESTATE OF RONALD BECRAFT,

Third-Party Plaintiff,

-against-

EMPIRE HEALTHCHOICE ASSURANCE, INC.

Third-Party Defendant.

\_\_\_\_\_x

The following papers were read and considered on the defendant/third-party plaintiff's motions to compel disclosure and for a protective order pursuant to C.P.L.R. §3103(a).

NOTICE OF MOTION TO COMPEL DISCLOSURE  
AFFIRMATION IN SUPPORT OF MOTION  
EXHIBITS A-C

AFFIRMATION IN OPPOSITION TO MOTION TO COMPEL  
EXHIBITS A-B

NOTICE OF MOTION FOR PROTECTIVE ORDER PURSUANT TO C.P.L.R. §3103(a)  
AFFIRMATION IN SUPPORT OF MOTION  
EXHIBITS 1-4  
MEMORANDUM OF LAW

AFFIRMATION IN OPPOSITION TO MOTION FOR PROTECTIVE ORDER  
EXHIBITS A-E

Plaintiff's cause of action seeks to recover for care and treatment rendered to the decedent Ronald Becraft at the plaintiff's nursing home prior to his death. As regards the motion to compel disclosure pursuant to C.P.L.R. §3124, the defendant/third-party plaintiff Heather Savage, as administrator of the estate of Ronald Becraft (hereinafter, "Becraft") alleges that interrogatories and document demands were served on the plaintiff on May 2, 2013, and good faith requests for disclosure pursuant to C.P.L.R. §3124 were sent to no avail. Becraft's motion to compel pursuant to C.P.L.R. §3124 seeks to compel the plaintiff to comply with certain interrogatories and the demand for production of documents. Plaintiff's opposition sufficiently demonstrated that the motion was not properly noticed in accordance with C.P.L.R. §2214(b). Becraft's motion was served by mail and demanded answering papers within seven days of the return date, yet Becraft failed to serve the motion twenty-one days prior to the return date. Furthermore, the plaintiff's opposition sufficiently demonstrates that the Becraft failed to make a good faith effort to resolve the matter presented in the motion in accordance with C.P.L.R. §3124 . It appears that Becraft sent a demand letter on July 17, 2013; only two days before serving the instant motion. Furthermore, the plaintiff has demonstrated that, prior to that letter demand and the instant motion, the plaintiff sent a letter dated June 4, 2013 indicating that the plaintiff was in the process of responding to the interrogatories and gathering the documents demanded. (Plaintiff's Opposition Exhibit B). Therefore, Becraft's motion to compel disclosure is denied because the motion was not properly notice pursuant to C.P.L.R. §2214 and Becraft failed to make a good faith to resolve the issues presented in its motion pursuant to C.P.L.R. §3124.

Becraft's second motion requests a protective order pursuant to C.P.L.R. § 3103(a) with respect to plaintiff's Demands #1-6, 9, 11, 12, 15-17, 19-20.<sup>1</sup> Defendant's objection is that the demands are overly broad and irrelevant. As regards Demand #16 for "copies of all medical records that will be relied on by defendant to support their defenses and/or counterclaims", the defendant further argues that this demand is overly broad and irrelevant, seeks privileged information not placed at issue, and there may be further medical records which are not presently in plaintiff's possession. Based on the plaintiff's opposition, it appears to this court that the defendant did not engage in good faith efforts to resolve the issues presented on this motion in accordance with Uniform Rule 202.7(b). Despite plaintiff counsel's written requests on June 27<sup>th</sup> and July 2<sup>nd</sup> for the defendant's objection letter, defense counsel failed to simply forward its objection letter in a good-faith attempt to resolve the discovery issues and instead prepared the instant motion one day later.

Nonetheless, in the interest of judicial efficiency, the court finds that Demands #1-6, 9, 11, 12, 15-17, 19-20, which include demands for "[a]ll powers of attorneys", [a]ll communications" and "[a]ny and all agreements", are overly broad, fail to identify the documents to be produced with reasonable particularity, and fail to make specific requests which are narrowly tailored to the allegations in the complaint, defendant's defenses and/or counterclaims. Demand #16, which requests all medical records that will be relied on by the defendant in support of its defenses and/or counterclaims, is permissible, provided that defendant may reserve the right to supplement any

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<sup>1</sup> The plaintiff withdrew Demands #7, 8, 13, 14. (Plaintiff's Affirmation In Opposition ¶12). Defendant/Third-Party Plaintiff's motion did not contest Demands #10 and 18.

response with any medical records which not presently in plaintiff's possession. Contrary to plaintiff's argument, the medical condition of the decedent was placed at issue by the defendant's counterclaim for negligent care and intentional infliction of emotional harm. The defendant, as the administrator of Becraft's estate, waived the physician-patient privilege by placing the decedent's medical condition at issue in the defendant's counterclaims. (CPLR 4504[c][1]). Demand #17, which requests all documents that will be relied on by the Defendant in support of its defenses and/or counterclaims is impermissible as overly broad and likely to elicit irrelevant and inadmissible documents, which may include privileged attorney work product.

On the basis of the foregoing, it is hereby

ORDERED that the Becraft's motion to compel plaintiff to respond to interrogatories and produce documents pursuant to C.P.L.R. §3124 is denied. The motion was not properly noticed in accordance with C.P.L.R. §2214(b). Becraft also failed to comply with C.P.L.R. §3124 by failing to make a good faith effort to resolve the issues presented prior to filing of the instant motion. It is further

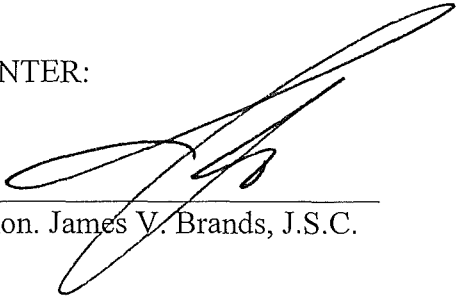
ORDERED that defendant's motion for a protective order pursuant to C.P.L.R. § 3103(a) is granted to the extent set forth herein. Plaintiff counsel shall serve the amended discovery demands which identify the documents to be produced with reasonable particularity, and make specific requests which are narrowly tailored to the allegations in the complaint, defendant's defenses and/or counterclaims, within twenty (20) days of the date of this order. It is further

ORDERED that counsel shall appear for a status conference on November 4, 2013 at 9:15 A.M.

The foregoing constitutes the decision and order of this court.

Signed: September 23, 2013  
Poughkeepsie, New York

ENTER:

  
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Hon. James V. Brands, J.S.C.

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Pursuant to CPLR Section 5513, an appeal as of right must be taken within thirty days after service by a party upon the appellant of a copy of the judgment or order appealed from and written notice of its entry, except that when the appellant has served a copy of the judgment or order and written notice of its entry, the appeal must be taken within thirty days thereof.

**When submitting motion papers to Judge Brands' Chambers, please do not submit any copies. Submit only the original papers.**